IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 299 OF 2003

Union of India ....Appellant.
V/s
(Orig.Complt)
1) Dattu Mukinda Kanchan
2) The State of Maharashtra ....
Respondents.

Mr.D.T.Palekar, Adv. for the appellant.

Mr.Shiv Motariya, Adv. For respondent No.1.

Mr.P.S.Hingorani, APP for the State-respondent NO.2.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

20th Nov., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Judge, Special Court under NDPS Act in NDPS Sessions Case No.2 of 2001 on 30.08.2002 the appellant-complainant has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned advocate for respondent No.1 and Public Prosecutor for the State we have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution case is that on 10.11.2000 on information and after duly complying with all the legal requirements and formalities, the officers of the appellants along with two panchas raided the premises of respondent No.1. In the search taken of the said premises, seven packed jute gunny bags were found and on opening the said gunny bags they noticed that all of them contained green coloured leaves, stalks and seeds like substance which emanated a strong smell and the same was admitted as ganja by respondent No.1. Since the ganja found in the said bags was similar in form and nature, two samples of ganja each weighing 25 gms. Were drawn from each of the said seven bags. The said ganja was seized under a reasonable belief for violations of provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Respondent No.1 was apprised of his rights and thereafter his personal search was conducted.

4. During the course of panchnama, respondent No.1 admitted the conscious possession and knowledge use of the said premises for storage of the said ganja found with him and that the said ganja was supplied to him by one Maqbool from Bidar, Karnataka, but he did not know the complete name and address of the said person. During the panchnama one electricity bill in respect of meter standing in the name of respondent No.1 and ration card were also taken in possession for further enquiries. Detailed panchnama was drawn on

the spot duly signed by the officers of the appellants, the panchas and respondent No.1 and a copy given to respondent No.1.

5. Respondent No.1 was arrested under section 42 of NDPS Act at 7.30 a.m. At Uruli Kanchan by officers of the appellants and produced before the J.M.F. Pune who was pleased to grant Magisterial custody initially and the MC remand was further extended from time to time. C.A. Report dated 5.1.01 confirmed that the said drug is ganja.

6. After completion of the investigation, necessary sanction for the prosecution of the accused was sought and thereafter a complaint under section 20(b)(i) and 25 of the NDPS Act, 1985 was filed in the Court on 8.1.2001. After framing the charge and on recording the evidence and on perusal of the same, the learned Special Judge was pleased to record an order of acquittal in favour of respondent No.1 by the judgment and order.

7. The prosecution examined six witnesses to prove its case under the NDPS Act. The learned trial Judge on appreciation of the evidence came to the conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. He therefore proceeded to acquit the accused. It is this order of acquittal which is impugned by the Union of India in this Appeal. According to the prosecution 206 kgs of ganja was found in possession of the accused and therefore the accused was prosecuted under section 8(c) read with section 20(b)(i)

and 25 of the NDPS act. A scrutiny of the judgment of the trial Court will show that the learned Judge has analysed the evidence threadbare and he found that there was material discrepancy in the samples seized and samples analysed. The sealing was not proper and therefore everything was doubtful. Superintendent of Prohibition who was in charge of the investigation is also not examined by the prosecution. His non examination has resulted in leaving several loopholes in the case. The order of acquittal thus cannot be termed as perverse or illegal. We agree with the findings recorded by the learned trial Judge and on appreciation of evidence we affirm the findings as recorded by the learned trial Judge. We need not therefore give elaborate reasons for confirming those findings recorded by the learned trial Judge.

8. Apart from that the provisions of section 20(b)(i) need consideration in the instant case. The provisions read as under:

> "**20.Punishment for contravention in relation to cannabis plant and cannabis.**----Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted thereunder :-
>
> (a) cultivates any cannabis plant; or
>
> (b) produces, manufactures, possesses sells, purchases, transports, imports inter-State, exports inter-State or uses

cannabis, shall be punishable,_____

(i) Where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees."

The accused is charged of having committed offence connected with cultivation of ganja and there is no evidence whatsoever on record pertaining to ganja. This is an additional reason in our opinion, why the order of acquittal deserves to be confirmed. In the result, the appeal fails and is dismissed.